

complaint

Mr and Mrs B complain on behalf of their limited company, C, and also as individuals who provided their personal guarantees and home as security for borrowing by C.

They complain that Clydesdale Bank Plc (trading as Yorkshire Bank) has created a situation in which their personal liability is far greater than it should have been, has taken advantage of the position to impose unfair charges and has been unreasonable in the way it has required them to repay their guarantee liability.

background

Mr and Mrs B owned Company A, which had borrowed from Yorkshire Bank for a business project. That project was drawing to a close, with the assets expected to sell at a good profit. Mrprofit. Mr and Mrs B had found a potential new project for Company A. They asked Yorkshire Bank to provide business finance to Company A for purchase and subsequent development of the next project and, in the meantime, started the project.

Because of the recession, the anticipated profitable sale of assets from the original project did not materialise. Yorkshire Bank was not willing to provide new money to Company A for the development of the follow-on project, and Company A stopped trading. Once all the assets had been sold, Company A still owed some £226,000 (covered by Mr and Mrs B's personal guarantee secured on their home) and Mr and Mrs B also owed £180,000 from their personal re-mortgage.

Mr and Mrs B hoped to repay their liability to Yorkshire Bank by regular interest instalments and capital repayments as and when they were able, funded through a mixture of Mr B's salary from his new job and income from a home business to be run by Mrs B. Although Yorkshire Bank initially indicated that this was likely to be acceptable, it subsequently declined that proposal and told Mr and Mrs B that it wanted them to sell their home to pay the debt.

Yorkshire Bank has not made a formal call on Company A's debt or on Mr and Mrs B's personal guarantee. Instead, it provided interim re-financing for the debt which included arrangement fees and charges for capital repayment.

An adjudicator investigated the complaint. Whilst she appreciated that Mr and Mrs B were meeting the interest on the debt, she felt that Yorkshire Bank had been patient in not making formal demand on Company A or on Mr and Mrs B's personal guarantee. She considered that the charges imposed on the refinancing were not unreasonable, given that Yorkshire Bank had not increased the lending margins on the debt. Overall, whilst the adjudicator appreciated that Mr and Mrs B had hoped to avoid having to sell their home in a difficult market, she did not consider that the complaint should succeed.

Mr and Mrs B did not agree with the adjudicator's conclusions. They wrote again with further representations, the main points of which I summarise:

- Before their dealings with Yorkshire Bank, they were home owners with savings and no debt.
- They entered into the second development project expecting things to go well, and after they had discussed it with Company A's business banking manager. Yorkshire

Bank had initially been enthusiastic about the second development but did not want to lend once the recession started to bite, and so they were left with assets that had to be sold at the bottom of the market.

- Since then, they have done their best to cover interest on the debt using their income. They have also used their short and long-term savings to meet their obligations. Yorkshire Bank has not yet lost any money on the debt.
- They have re-mortgaged their home to help repay the debt. If things had been arranged differently, they could have kept the losses within Company A and then liquidated it, and avoided additional personal mortgage debt. They feel they have been duped into taking on a higher personal liability than they might otherwise have agreed to.
- They discussed their case with their Member of Parliament, and with a friend who is an experienced former bank manager, before coming to the ombudsman service. It feels wrong that they should be forced to sell their home, when they are keeping up their mortgage repayments.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Initially, Mr and Mrs B operated Company A for some years as a side business alongside Mr B's career in the same industry. In 2006, they decided to develop Company A as a full-time business and borrowed for a project that appeared to be a success and was expected shortly to yield a good profit on sale of the assets.

It was against that background that Mr and Mrs B sought finance in 2009 for a new project that it had identified for Company A. They borrowed on their personal mortgage to get things moving, while they waited for Yorkshire Bank's decision on further lending to Company A for the development. I am not persuaded that Yorkshire Bank had a duty at that time to caution Mr and Mrs B about re-mortgaging. That was their decision, made in the light of their own assessment of the likely risks and rewards of the new project they had identified in a business area in which Mr B was experienced.

I appreciate that this left Mr and Mrs B in a very difficult position when the recession meant that the expected profit from the sales was not realised, and Yorkshire Bank was unwilling to lend Company A money to complete the second project on a speculative basis. But I do not consider that this means Yorkshire Bank did something wrong.

Mr and Mrs B had already given Yorkshire Bank their personal guarantees in 2006, secured against their home, for Company A's debts up to a limit of £300,000 plus interest. So, whether they borrowed for the new project in their personal capacity or through Company A, they would still have been liable for the debt up to that amount. It was always open to them to place Company A into liquidation but, again, that would not have altered their personal

liabilities to Yorkshire Bank at that point. I am not persuaded that Yorkshire Bank duped them into incurring avoidable personal liability.

Once it became clear that Company A was not able to repay its debt, Yorkshire Bank was entitled to make formal demand on Company A and also on Mr and Mrs B under their personal guarantee if it wished. Initially, it seemed that Yorkshire Bank might agree to Mr and Mrs B's suggestion that they be allowed to repay the debt piecemeal over the long term, covering interest in the meantime. But Yorkshire Bank eventually decided that it was not willing to agree to that, and wanted Mr and Mrs B to market their home.

In all the circumstances, I do not consider that was an unreasonable request for Yorkshire Bank to make. Mr and Mrs B had pledged their home in 2006 as security for their personal guarantees, and Yorkshire Bank had relied on that security when lending to Company A. . I appreciate that Mr and Mrs B feel very keenly the change in their financial position, but I do not consider I can fairly find that this happened because of wrongdoing by Yorkshire Bank.

Should Yorkshire Bank take steps to enforce the security which it holds over Mr and Mrs B's home, then it will be for the court to decide whether or not it is entitled to possession of the property.

I have carefully considered Mr and Mrs B's view that Yorkshire Bank has taken advantage of the situation to impose charges in the interim re-financing arrangements it has provided. While I can understand their reluctance to accept the charges, I have not seen any persuasive evidence that Yorkshire Bank promised them that it would not make any charges. . I am also conscious that Yorkshire Bank has maintained low margins on the borrowing, even though the overall proposition has altered significantly. Taking the matter as a whole, I do not consider that Yorkshire Bank seeks to impose unreasonable charges.

my final decision

Given my findings, my final decision is that I do not uphold this complaint.

Jane Hingston
ombudsman